

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

On August 29, 2005, the claimant had been loading and unloading diesel fuel. After unloading fuel at a farm location he returned to Elkhart, Kansas, and parked about a half block from a station. The claimant walked to the station to get paperwork signed. As he was walking back to his truck, claimant's knee gave out. Claimant testified he had walked over 4-6 inch river rock but was walking on the paved street surface when his knee gave out. Claimant further agreed that when his knee gave out he did not trip or slip on anything in the street.

Claimant's job duties include occasionally climbing up and down ladders to get the 3-inch 20-foot long hoses needed for unloading the diesel fuel at some locations. Before the injury, claimant testified he was having a little tenderness in his knee while climbing in and out of the truck as well as when he kneeled.

Claimant was able to drive back to the Liberal yard. Respondent's owner and a mechanic helped the claimant get out of his truck and then transported him to the emergency room for treatment. Claimant was referred to a surgeon, Dr. Suhail Ansari. An MRI was performed and claimant was taken off work from August 29, 2005 through November 14, 2005. The claimant returned to his normal job working his regular hours.

Claimant's attorney wrote a letter on October 31, 2005, to Dr. Ansari regarding causation. The doctor replied: "Injury of August 29, 2005 has aggravated/exacerbated preexisting condition of degenerative joint. Meniscal tear could have been caused by the injury described."<sup>1</sup> No further medical evidence was introduced at the preliminary hearing.

In workers compensation litigation, it is the claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.<sup>2</sup>

Because the accident occurred while claimant was at work, the accident occurred in the course of claimant's employment. However, the accident must also arise out of the employment before it is compensable under the Kansas Workers Compensation Act.<sup>3</sup>

The phrase "out of" employment points to the cause or origin of the worker's accident and requires some causal connection between the accident and the employment. An accidental injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the resulting injury. An injury arises out of

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<sup>1</sup> P.H. Trans., Cl. Ex. 1.

<sup>2</sup> K.S.A. 2005 Supp. 44-501 and K.S.A. 2005 Supp. 44-508(g).

<sup>3</sup> See *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973).

employment if it arises out of the nature, conditions, obligations, and incidents of the employment.<sup>4</sup>

In *Hensley*<sup>5</sup>, the Kansas Supreme Court adopted a risk analysis. It categorized risks into three categories: (1) those distinctly associated with the job; (2) risks which are personal to the workman; and (3) neutral risks which have no particular employment or personal character. According to *Larson's*<sup>6</sup>, the majority of jurisdictions compensate workers who are injured in unexplained falls upon the basis that an unexplained fall is a neutral risk and would not have otherwise occurred at work if claimant had not been working. The Board has consistently held that neutral risks or unexplainable falls occurring in the course of an employee's employment, even though they have no particular employment or personal character, are compensable.

The respondent agrees that claimant's right knee injury occurred in the course of his employment but denies that the injury arose out of his employment.

The respondent cites *Martin*<sup>7</sup>, as a case with similar facts that supports its position that claimant's injury did not arise out of the employment relationship with the respondent. The worker in *Martin* had a history of back problems and alleged he injured his back when he exited his truck while at work. The Court of Appeals held that a worker's preexisting back condition was a risk personal to the worker and any everyday activity would have a tendency to aggravate his condition. The court concluded this was a risk that was personal to the worker and, therefore, not compensable. The respondent argues that in the present case there is no evidence in the record that establishes that a risk associated with the employment caused claimant's injury and thus claimant's injury is not compensable.

The Board disagrees with the respondent's reliance on the *Martin* case as support for its argument that the claimant's injury is not compensable. There is no evidence in the preliminary hearing transcript or medical records attached thereto that claimant had a previous history of knee problems before his knee gave out at work. Therefore, the claimant in this case did not have preexisting problems that would constitute a personal risk to him as was the factual circumstance in *Martin*. Nor is this a case that claimant's disability resulted from the wear and tear common to acts of everyday living combined with a preexisting condition, as was the case in *Boeckmann*.<sup>8</sup>

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<sup>4</sup> *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 899 P.2d 1058 (1995).

<sup>5</sup> *Hensley v. Carl Graham Glass*, 226 Kan. 256, 597 P.2d 641 (1979).

<sup>6</sup> 1 *Larson's Workers' Compensation* §7.04[1][a] (2005).

<sup>7</sup> *Martin v. U.S.D.* No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980).

<sup>8</sup> *Boeckmann v. Goodyear Tire & Rubber Co.*, 210 Kan. 733, 504 P.2d 625 (1972).

In following the majority rule as set out in *Larson's, supra*, the Board finds, for preliminary hearing purposes and based upon the record compiled to date, that this neutral risk or unexplained incident where claimant's knee gave out is compensable. Accordingly, the Board affirms the ALJ's Order for Compensation.

**WHEREFORE**, it is the finding of the Board that the Order of Administrative Law Judge Pamela J. Fuller dated February 22, 2006, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of April 2006.

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BOARD MEMBER

c: Steven L. Brooks, Attorney for Claimant  
Stephen P. Doherty, Attorney for Respondent and its Insurance Carrier  
Pamela J. Fuller, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director